

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9919 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAMSING PANDOR & ANR.

Versus

STATE OF GUJARAT

Appearance:

MR DA BAMBHANIA for Petitioners
MR VB GHARANIA, learned Assistant Govt.Pleader for
respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 24/11/1999

ORAL JUDGEMENT

Both the petitioners herein are members of Scheduled Tribe and both of them have filed this petition claiming promotion in the cadre of Class-II Officers of the Gujarat General State Service. The petitioner no.1 has been working as Shirestedar in the Office of the Settlement Commissioner under the Revenue Department since 26th July 1990 (by deemed date) and the petitioner no.2 has also been working as Shirestedar in the Office of the Settlement Commissioner, Revenue Department, since 21st January 1991. The petitioners have come with the

case that 70 posts in the cadre of Class-II officers of Gujarat General State Service were sanctioned by the Finance Department for land records on 11th December 1995 and a select list was prepared. The appointments in the cadre of Class-II officers as above were required to be made by promotion on the basis of proved merit and efficiency. It is the common case of the parties that the names of both the petitioners were included in the select list which was prepared. The said select list was prepared on 23rd October 1996 and a copy of the same has been enclosed with the affidavit-in-reply filed on behalf of the respondent no.2 dated 28th April 1999 at Annexure-R3 at page nos.55 to 65 of the paper book. This select list in all contains 97 names (91+6) by way of insertion at 48A, 53A, 57A, 71A (Shri J.U.Parmar promoted on 4th December 1997), 78A, and 88A. It is also the common case of the parties that the candidates whose names appeared at Sr.no.1 to 57 in this list were promoted on 16.11.1996. Thereafter another order was passed on 14th December 1996 whereby the candidates named at Sr.no.59 to 65, i.e. seven in number were promoted and the third order was passed on 21.8.1997 whereby the candidate named at Sr.nos.48A, 53A, 57A, 58, 66 to 78, 78A and 79 to 86, i.e. 26 in number were promoted. By these three orders dated 16.11.1996, 14.12.1996 and 21.8.1997, $57+7+26=90$ candidates were promoted and one Shri J.U.Parmar at No.71A was then promoted on 4.12.97 and thus $90+1=91$ candidates in all were promoted out of this select list of 97 candidates. In para 2 to 11 of the select list dt. 23.10.96 certain remarks, explanations and reasons have been given with regard to certain other candidates including one Shri B.R.Bhagora whose name has been included in the select list at Sr.no.88A that the details were not available as to whether the adverse remarks against him had been expunged or not. It, therefore, appears that except the candidates included in the aforesaid select list at Sr.nos.87, 88, 88A, 89, 90 and 91 (six in number) all other candidates have already been promoted. Out of these six candidates who have not been promoted, the petitioner no.1 is at Sr.no.88 (i.e. at no.2 amongst those who have not been promoted out of the select list) and petitioner no.2 is at Sr.no.91, (i.e. at Sr.no.6 amongst those who have not been promoted.

2. In short, the grievance raised by the petitioners is that even out of 70 posts which were sanctioned in 1995, 55 posts were to be filled from the general category and 15 posts were to be filled from amongst the candidates belonging to the reserved category, i.e. Scheduled Tribe and Scheduled Caste. It has been

submitted that according to the Roster system 10 posts at Sr.nos.1, 8, 15, 22, 29, 36, 43, 50, 57 and 64 were to be filled from amongst the candidates belonging to the Scheduled Tribe and the posts at Sr.nos.4, 18, 32, 46 and 61 were to be filled from amongst the candidates belonging to Scheduled Caste. However, it is given out by the respondents in para 2 and 3 of the reply affidavit dated 28.4.99 as under:

"2. I say and submit that the Government, in

Revenue department has published a notification promoting 57 employees from Class-III to Class-II vide notification dated 16-11-96 purely on temporary and adhoc basis. The 57 employees were thus promoted accordingly. Annexed hereto and marked Annexure-R4 is copy of notification dated 15-11-96. Thereafter, vide Revenue department Yadi no.S.L.L. 1096-1110-H dated 14-12-96, 7 more employees were promoted to Class-II post, copy whereof is annexed hereto and marked Annexure-R5. And vide Revenue department notification No.S.L.L.1096-1110-H dated 20-8-97, 26 employees were given promotion to the post of Class-II. Copy of notification dated 20-8-97 is annexed hereto and marked Annexure-R6. From this list of 26 persons, two employees were depromoted to Class-III, thus total 88 persons were promoted to Class-II post. Departmental promotion/ Selection committee recommended 98 employees eligible to be promoted, out of which 88 employees are promoted. Present petitioner no.1 is at Sr.no.94 and no.2 at sr.No.98. Therefore both the petitioners are not given adhoc promotion. However next list of promotion if granted by the concerned department, and petitioners are within the number of sanctioned post for promotion, they would be promoted accordingly. I further say and submit that totally 109 employees wait list was prepared for recommending their names to the post of Class-II, which is according to the seniority and roster system. And this list also include 17 S.T. and 10 S.C. candidates.

3. I further say and submit that petitioner

no.1 Shri Pandor joined in the Land Records office on 2-1-1978. He has passed the departmental examination in 1985. He has been granted the post of Siresthegar on 20-7-91 and has also been given deem date as on 20-7-91. I say and submit that the Government has granted 70

posts of Class-II, out of which 10 posts are reserved for S.T. and 5 posts for S.C. employees.

I further submit that when the aforesaid list was prepared total 109 employees were eligible for consideration to the post of Class-II. Out of these 109 employees, 10 S.T. and 17 S.C. employees were eligible and they all were included in the list. Those who have not passed the departmental examination in time, in that case the date of promotion to the post of Sirestedar in such cases were considered while preparing the wait list of 109 employees. In fact Shri Pandor was promoted on 26-7-90 on the post of Siresthedar, and on that basis he stood at Sr.no.104. The persons shown above his seniority are the persons who have been promoted as Sirestedar before the petitioner no.1 and they all are senior to the petitioner. I say and submit that no junior to the petitioner has been included above the petitioner in the seniority list."

In the last para of this reply affidavit dt.28.4.99 in para 6 it has been stated that the petitioners case would be considered according to their seniority and availability of vacancies on the post of Class-II and, therefore, the present petition be dismissed.

3. It appears that the Gujarat State Land Records Scheduled Tribe Class-III Employees Association of Ahmedabad represented and made a grievance through the representations, copies of which have been enclosed as Annexure.B Colly. with the petition and a communication dated 2nd April 1997 was sent by the Revenue Department in which it was stated that no candidate having the minimum experience belonging to the Scheduled Tribe being available for promotion, there is no question of considering the grievance as has been raised in the representations with regard to filling of the posts out of the candidates belonging to the Scheduled Tribe and for filling up the vacancies of backlog.

4. During the course of arguments it was given out by learned Asstt.Govt.Pleader under instructions from the concerned Officer who was present on behalf of the Department that, till 1991 the candidates belonging to Scheduled Tribe were not available for Class-II posts from amongst the members of the Class-III and therefore, the vacancies which were available for promotion quota were directed to be diverted for direct recruitment and

regular direct recruits were to be considered and requisition for that purpose was sent to the Gujarat Public Service Commission (GPSC) and therefore, those vacancies which had been diverted for direct recruits were not taken into consideration while operating the select list Annexure.R-3 dated 23rd October 1996. It was also given out by learned Asstt.Govt. Pleader on instructions from the same officer that till beginning of 1998, no candidates had become available for appointment from the GPSC prior to the order dated 21.9.1998, a copy of which has been enclosed with the petition as Annexure.G at page nos.42 to 46. Mr.Bambhania, learned Counsel for the petitioners while making reference to statement Annexure.A enclosed with the petition tried to show that out of the number of sanctioned posts, i.e. 70 as was sanctioned in 1995, 55 were for general category, 5 for S.C. and 10 for S.T., the candidates named at Sr.no.3, i.e. Shri S.V.Patel, Shri N.D.Patel at Sr.no.8, Shri S.M.Vasava at Sr.no.9, and Shri K.U.Rathwa at Sr.no.52 (in the order dt.16.11.96) are of course Scheduled Tribe candidates, but they are amongst first 55 (i.e. the number of posts meant for general category) and therefore, the number of posts against which they have been promoted i.e. 4 could not be reduced from the total number of posts which were reserved for Scheduled Tribe candidates. Thus, four Scheduled Tribe candidates are amongst the first 55 candidates and they have been promoted in their own rights. Merely because they have come amongst the first 55 candidates in the select list, it cannot be said that they have been appointed against the reserved vacancies meant for reserved category candidates.

5. It has been then pointed out that the candidate at Sr.no.75 in the statement Annexure.A and in the select list dt.23.10.96 after 55 selected candidates i.e. Shri Y.G.Makvi who belongs to S.T. is the only candidate who is above the petitioner no.1, his name being at Sr.no.88. There is a candidate of S.T. i.e. Shri P.M. Baria at Sr.No.89 i.e. below petitioner no.1 at No.88 but above petitioner no.2 at no.91 in the select list. Thus, had the Roster system been followed and the vacancies had been made use of for the purpose of promotion by operating the Roster system, the petitioner no.1 being a Scheduled Tribe candidate would have been at Sr.no.2 and the petitioner no.2 would have been at Sr.no.4 (amongst selected candidates after filling up 55 vacancies in general category). Thus even if four candidates belonging to Scheduled Tribe were to be taken and even if only four vacancies are taken to be reserved although 10 vacancies were meant for Scheduled Tribe candidates,

there was no question of depriving the present petitioners from promotion. Hence, it has been shown that, even if only 70 candidates were to be promoted, all the four S.T. candidates, i.e. both the petitioners as also Shri Y.G. Makvi at No.75 and Shri P.M.Baria at No.89 would have been promoted as under:

- 75. Shri Y.G.Makvi
- 88. Shri Ramsinh Pandor - petitioner no.1
- 89. Shri P.M.Baria
- 91. Shri Narsinh B. Bhedi - petitioner no.2.

6. The stand which was taken in the communication dated 2.4.1997 by the Revenue Department that no candidate belonging to the Scheduled Tribe with minimum experience was available has been given up at the time of arguments before this Court on the basis of Rule 11A of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, the copy of which has been annexed as Annexure-R1 with the reply affidavit by way of 3rd amendment of 1985 as notified on 6th December 1985 as the proviso thereof says that where the appointing authority is satisfied that a person having experience as specified is not available for promotion and that it is in public interest to fill up posts or service by promotion of a person having experience for a lesser period, it may for reasons to be recorded in writing promote such person who have experience for a period of not less than two-third of the period specified in Clauses (a), (b), (c) or (d) which applies to him. Clauses (a), (b), (c) and (d) of the proviso as per this amendment are reproduced as under for ready reference.

- (a) No person shall be promoted from a lower post in Class-II service to a higher post in the same service unless he has an experience of five years in the post from which he is to be promoted,
- (b) No person shall be promoted from Class-III service to Class-II service unless he has an experience of seven years in Class-III service from which he is to be promoted,
- (c) No person shall be promoted from a lower post in Class-II service to a higher post in the same service unless he has an experience of five years in the post from which he is to be promoted, and

(d) No person shall be promoted from Class-II service to Class-I service unless he has an experience of eight years in Class-II service from which he is to be promoted.

7. It is not disputed that the petitioners herein had completed this two-third period of experience in 1995 itself and it was also given out that the benefit of this proviso is equally given to the candidates of general category as well as those belonging to Scheduled Tribe and Scheduled Caste as has been held by the Supreme Court in the case of Sales Tax Commissioner v. B.G.Patel, reported in AIR 1995 SC 865. Thus, the controversy with regard to the experience does not survive and so far as the availability of the vacancies for the petitioners belonging to Scheduled Tribe are concerned it is amply clear as a question of fact that these two petitioners could have been promoted against the reserved vacancies meant for Scheduled Tribe even if there would have been only 70 vacancies.

8. It may be noted that in the end of para 1 of the reply affidavit dt.28.4.99 respondents themselves have stated as under:

"Revenue Department sent a confidential letter bearing No.S.L.L.1096-2110-H dated 23-10-96 saying that total 91 employees be promoted for Class-II on temporary basis. At that time Mr.Pandor's name was included in the list."

Here is a case in which admittedly 91 appointments had been given and therefore, there was no question of denial of promotion to the present petitioners as also the candidates belonging to the Scheduled Tribe who is in between the petitioner no.1 and petitioner no.2 in the select list, namely, P.M.Baria. Even otherwise if the vacancies which were available for promotion quota are diverted for direct recruits in the year 1991 and till the end of 1997, no candidates had become available by direct recruitment through GPSC. The appointments by direct recruitment were made in 1998. The select list for promotion had been prepared in the year 1996 by the Department and at the time when the select list was prepared in the year 1996, the candidates had become available for the purpose of promotion for posts of Class-II from amongst the holders of the posts in the lower cadre like the present petitioners and in all fairness those vacancies should have been made use of and should have been made available to the departmental candidates who had become available for promotion and to

that extent, the posts of promotion quota which had been diverted for direct recruits way back in 1991 ought to have been reverted back for promotion quota so as to make available the same for the departmental candidates and only after appointing the departmental candidates by way of promotion against such posts which were of the promotion quota, the remaining posts could be made use of for the direct recruits when appointments were made by direct recruitment in 1998. In any view of the matter, it was not a case in which the petitioners could be deprived of their due consideration for appointment to the Class-II post by promotion once their names had been included in the select list, this Court finds that the grievance raised by the petitioners in this Special Civil Application is legitimate and justified.

9. Accordingly, this Special Civil Application succeeds and the same is allowed. The respondents are directed to act upon and give effect to the select list dated 23rd October 1996 with regard to the petitioners also for the purpose of consideration for promotion to Class-II posts including the candidate belonging to Scheduled Tribe at Sr.no.89, i.e. Shri P.M.Baria who were denied promotion at the time when the orders dated 16th November 1996, 14th December 1996, 21st August 1997 and 4th December 1997 were passed. As a result thereof when the petitioners are promoted to Class-II posts they will have to be promoted from the due date with all consequences to follow. The respondents shall also assign the due seniority to the petitioners in Class-II vis-a-vis other promotees of the select list of 1996 and the direct recruits appointed in the year 1998, in accordance with law. The petitioners shall be entitled to all consequential benefits except the financial benefits in accordance with law. Appropriate orders shall be passed by the Department within two months from today. The petition is allowed. The Rule is made absolute accordingly. No order as to costs.

Sreeram.